

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS  
3 AUSTIN DIVISION

4 WEARABLE SHOE TREE, LLC ) Docket No. A 22-CA-789 RP  
5 )  
6 vs. ) Austin, Texas  
7 )  
8 HEFEI KENUO TRADING CO., )  
9 LTD, ET AL ) October 7, 2022

10 TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING  
11 BEFORE THE HONORABLE ROBERT L. PITMAN  
12

13 APPEARANCES:

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09:02:03 1 THE CLERK: A 22-CV-789, Wearable Shoe Tree, LLC  
09:02:07 2 vs. Hefei Kenuo Trading Company, Limited, and others, for  
09:02:11 3 preliminary injunction hearing.

09:02:17 4 MR. ROTHMAN: Good morning, your Honor.

09:02:18 5 Joel Rothman on behalf of the Plaintiff Wearable  
09:02:21 6 Shoe Tree. Also with me is my associate, Eliezer Lekht.  
09:02:25 7 And present in the courtroom are Hilton Hart, Amy McPeak  
09:02:28 8 and Will Fogic (phonetic), who are representatives of this  
09:02:33 9 plaintiff and the two others in the case.

09:02:38 10 Good morning and thank you for the time today.

09:02:40 11 THE COURT: Good morning. Thank you.

09:02:42 12 So I guess as to each of these cases as we go  
09:02:47 13 along, the following information would be helpful to me,  
09:02:49 14 in addition to whatever you need to get on the record, is  
09:02:52 15 if you could tell me what defendants have yet to be served  
09:02:55 16 and what you plan to do with those; what defendants have  
09:02:59 17 been served, but didn't get notice of this hearing, and;  
09:03:02 18 third, what defendants, to your knowledge, were served,  
09:03:07 19 got notice and are apparently not here today.

09:03:10 20 So if you could include that in your remarks, but  
09:03:12 21 other than that, I'll let you make a record however you'd  
09:03:15 22 like to.

09:03:15 23 MR. ROTHMAN: Thank you very much, your Honor.  
09:03:17 24 Can I argue from counsel table?

09:03:19 25 THE COURT: Sure as long as you're near the

09:03:21 1 microphone.

09:03:21 2 MR. ROTHMAN: Sure. Thank you.

09:03:22 3 So in this case, your Honor, 248 out of 408  
09:03:29 4 defendants have been served. All of the defendants of  
09:03:32 5 those defendants have also been served with notice to  
09:03:36 6 appear at today's hearing. The reason why we haven't  
09:03:43 7 served all or almost all of the defendants is, we're still  
09:03:48 8 awaiting information on their true identities, e-mail  
09:03:53 9 addresses from several of the marketplaces, most  
09:03:58 10 particularly Alibaba, which typically takes two to three  
09:04:02 11 weeks to produce the information to us, and we're still  
09:04:06 12 waiting for those.

09:04:09 13 There's another -- so that accounts for about 132  
09:04:13 14 defendants and then, there's another 31 that also are  
09:04:18 15 awaiting information. Not Alibaba-related but some other  
09:04:24 16 marketplaces. What we often find is that as we uncover  
09:04:29 17 the information about the defendants, some of them are  
09:04:33 18 actually associated with foreign marketplaces like EU  
09:04:38 19 versions of Amazon, and so forth. And so, we typically  
09:04:43 20 have problems getting the information because there are  
09:04:48 21 GDPR and jurisdictional objections that they raise; and  
09:04:51 22 that may very well be what accounts for the other 31  
09:04:54 23 defendants.

09:04:54 24 But the majority of the defendants have been  
09:04:58 25 served and have been notified of today's hearing and are

09:05:04 1 not here in the courtroom.

09:05:05 2 THE COURT: And I will for the record -- I'll  
09:05:09 3 have the record reflect that no one has announced on  
09:05:12 4 behalf of any of the defendants in the case.

09:05:14 5 MR. ROTHMAN: Okay. Thank you, your Honor.

09:05:16 6 So based on the motion for preliminary injunction  
09:05:22 7 and the declarations filed in support, we'd ask for your  
09:05:29 8 Honor to enter preliminary injunction in this case as to  
09:05:32 9 those defendants that have been served. We have filed  
09:05:36 10 certificates of service, so the docket will reflect which  
09:05:40 11 specific defendants would be subject to the preliminary  
09:05:43 12 injunction we're asking for.

09:05:46 13 We believe that the material submitted, the  
09:05:52 14 evidentiary material demonstrates a probability of success  
09:05:55 15 on the merits; that the entry of an injunction will serve  
09:06:01 16 the plaintiffs' current irreparable injury that they're  
09:06:06 17 suffering; that balance of hardship tips in plaintiffs'  
09:06:10 18 favor; and that the relief here serves the public  
09:06:14 19 interest. And we've provided your Honor with argument and  
09:06:17 20 citations in the record to all of that.

09:06:22 21 If there is something specific in those four  
09:06:28 22 factors that your Honor wishes us to proceed with more  
09:06:31 23 detail on, we can. But I think the record here is very  
09:06:34 24 clear that there is support for the entry of the  
09:06:39 25 preliminary injunction.

09:06:42 1 Just to preview the future for your Honor, in  
09:06:49 2 this case, we intend to move very quickly to obtain a  
09:06:56 3 clerk's default against those defendants who have not  
09:07:00 4 entered appearances. We intend, thereafter, to move for  
09:07:04 5 the entry of a final default judgment and permanent  
09:07:09 6 injunction as to those who have not appeared and who the  
09:07:14 7 clerk has defaulted so that we can proceed with this case  
09:07:19 8 to judgment and permanent injunction as quickly as  
09:07:23 9 possible.

09:07:27 10 We understand that we don't want these cases  
09:07:29 11 lingering on your Honor's docket, and we'd like to bring  
09:07:32 12 them to conclusion as quickly as we can.

09:07:34 13 THE COURT: Okay. I have not checked. Have you  
09:07:38 14 submitted a proposed order that lists the specific  
09:07:45 15 defendants for which you're requesting relief today?

09:07:49 16 MR. ROTHMAN: We have given to your Honor's law  
09:07:52 17 clerk a -- proposed orders for this case and for the other  
09:07:57 18 two cases in Word format -- PDF format. I don't remember  
09:08:02 19 off top of my head right now if it identifies specifically  
09:08:06 20 all the defendants by number, but I will certainly follow  
09:08:10 21 up today and make sure that we transmit a revised version  
09:08:16 22 of it if it doesn't because it should reflect that. Yes.

09:08:18 23 THE COURT: That'd be great because we want to  
09:08:20 24 make sure that we're not relying on our review of the  
09:08:22 25 docket and that you have sufficiently reviewed the docket

09:08:27 1 and the paperwork in the case so that you were enjoining  
09:08:32 2 the correct defendants.

09:08:33 3 MR. ROTHMAN: Right. I'll also mention to your  
09:08:35 4 Honor that this case is in a much earlier stage than the  
09:08:38 5 other two. We have already begun to negotiate  
09:08:41 6 resolutions. We're preparing very soon to submit  
09:08:45 7 dismissals. So one of the things that might be helpful  
09:08:51 8 is, we'll go back and reconcile those so that we're not  
09:08:55 9 asking your Honor to enter an injunction against those  
09:08:57 10 that we've settled with and so that it's clear from that  
09:09:00 11 point of view.

09:09:02 12 THE COURT: That'd be great. And just going  
09:09:04 13 forward, anything that would require us to go through and  
09:09:08 14 confirm anything through the docket with this number of  
09:09:10 15 defendants, that's virtually impossible for us. And so,  
09:09:15 16 I'm going to be depending largely on you doing a due  
09:09:17 17 diligence and making sure that you've reviewed information  
09:09:21 18 just as you've just suggested to make sure that the right  
09:09:26 19 parties are in the right orders.

09:09:27 20 MR. ROTHMAN: Right. No question, your Honor.  
09:09:32 21 There's a need and a demand to be highly organized with  
09:09:36 22 these cases and we understand it. And we appreciate the  
09:09:39 23 difficulty that the Court would be in if we were not in a  
09:09:44 24 position to be able to provide your Honor with precise  
09:09:47 25 information.

09:09:48 1 THE COURT: Great. The only other thing I had as  
09:09:50 2 to this than the other cases is that something that is  
09:09:54 3 arising, and I fear may arise with more frequency, is  
09:09:58 4 defendants who are expressing concern about the amount of  
09:10:05 5 bond that you're seeking. And I just don't want to  
09:10:10 6 continue to have to deal with that as frequently as we  
09:10:14 7 might.

09:10:15 8 And so, have you thought about either adjusting  
09:10:20 9 the bond or removing the bond? Because I don't want  
09:10:23 10 dozens of defendants coming in and me having to spend my  
09:10:26 11 time on this issue of bond.

09:10:29 12 MR. ROTHMAN: Yes. We understand that, your  
09:10:31 13 Honor. You may recall that since this case was filed,  
09:10:35 14 about three weeks or so ago, or may have been longer than  
09:10:39 15 that since its actual filing, but since your Honor issued  
09:10:44 16 the TRO, there were two defendants who raised concerns  
09:10:50 17 about the amounts restrained. We met and conferred with  
09:10:56 18 counsel for those defendants, and prior to today's  
09:11:01 19 hearing, we filed motions that would release in its  
09:11:06 20 entirety or retain only a smaller amount of the money  
09:11:11 21 restrained.

09:11:13 22 And in the two situations where there was --  
09:11:16 23 there were funds restrained, there were funds restrained  
09:11:21 24 in this same amount as the bond posted in support of the  
09:11:24 25 TRO. So we're very sensitive to these issues. I don't

09:11:29 1 want to bring these issues before the Court unnecessarily.  
09:11:35 2 And so, we're always looking at the equity issues. These  
09:11:43 3 are important issues to our client. Our client needs the  
09:11:48 4 relief and is grateful that the Court provides the relief  
09:11:54 5 it does because there are really, at this point, no other  
09:11:59 6 avenues available to deal with the scourge of online  
09:12:05 7 counterfeiting; but at the same time, we realize that the  
09:12:08 8 limit of the Court's jurisdiction and power is such that  
09:12:12 9 we have to be conscious to make sure that we're not  
09:12:15 10 restraining amounts in excess of that which equity would  
09:12:20 11 permit us to.

09:12:21 12 THE COURT: Sure. Well, it sounds like you're  
09:12:24 13 acting eminently reasonably. I just want to make sure  
09:12:28 14 that you -- and I think you do appreciate what it's -- on  
09:12:31 15 this end, trying to keep up with a case like this.

09:12:34 16 MR. ROTHMAN: Right.

09:12:34 17 THE COURT: So sounds like you've got it. But I  
09:12:36 18 just wanted to be satisfied of that and I am.

09:12:39 19 MR. ROTHMAN: Right. Thank you, your Honor.

09:12:40 20 And, you know, I filed these cases in numerous  
09:12:45 21 other districts. I more frequently file them in the  
09:12:49 22 Southern District of Florida, but I file them in the  
09:12:51 23 Southern District of California, the Northern District of  
09:12:55 24 Illinois, and the Southern District of New York. So, you  
09:12:58 25 know, these are --



09:12:59 1 THE COURT: Is it because those are all nice  
09:13:01 2 places to visit?

09:13:02 3 MR. ROTHMAN: They are. Not as nice as this  
09:13:04 4 place here.

09:13:05 5 THE COURT: Oh, that's terrible. I'm sorry to  
09:13:06 6 hear that. We don't want to promote that kind of tourism.

09:13:10 7 MR. ROTHMAN: Well, I'm sorry. And I'll take  
09:13:12 8 that into account when we're choosing venue in the future.  
09:13:16 9 But we understand and we appreciate that these are issues.  
09:13:24 10 I really am quite sincere when I say that but for the  
09:13:30 11 federal courts' willingness to accept and adjudicate these  
09:13:39 12 cases, clients like this one, the others that are on your  
09:13:42 13 docket, and many others, have no recourse right now. It's  
09:13:45 14 just an unfortunate situation.

09:13:47 15 THE COURT: Well, and that's what we're here for  
09:13:49 16 and I'm happy to serve in that capacity.

09:13:51 17 MR. ROTHMAN: Thank you.

09:13:51 18 THE COURT: Great. Shall we move on to the other  
09:13:55 19 cases then.

09:13:56 20 MR. ROTHMAN: Yes, we can. I'm going to let my  
09:13:58 21 associate, Mr. Lekht, speak next.

09:14:00 22 THE COURT: Great.

23 (Proceedings concluded.)  
24  
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\* \* \* \* \*

UNITED STATES DISTRICT COURT )

WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Certified Realtime Reporter,  
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*Lily Iva Reznik*

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